

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2954 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

TAGMOHMAD UMARKHAN

Versus

ABAD DAIRY

Appearance:

MR KS ACHARYA for Petitioners

MR KM PATEL for Respondent

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/05/2000

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution, the petitioners, five in number, had challenged the judgment and order dated 30.3.1988 passed by the Industrial Tribunal in Reference (IT) No. 805/82.

2. The demand of the workmen was that their pay-scale was required to be revised from Rs.260-350 to Rs.380-560. The Tribunal rejected the reference after holding that the case of the workmen was (that there

existed a similar post under the Ahmedabad Municipal Corporation and that the incumbents of such post were given pay scale of Rs.380-560) was not made good as no equivalent post existed under the Corporation. It is the aforesaid judgment and award which is under challenge in this petition.

3. During pendency of the petition, petitioner Nos.

1 and 3 - Tagmohamad Umarkhan and Kalubhai Kasambhai have left service of the respondent Abad Dairy under the Voluntary Retirement Scheme. Petitioner Nos. 2 and 4 Kaulbhai Mohamadbhai and Gulamhamid Kasambhai have been promoted to the higher post carrying the pay scale of Rs.380-560. Hence, the learned counsel for the petitioners now presses this petition for petitioner No. 5 Pasco Ramand Desoza. The learned counsel has placed reliance on the judgment dated 27.6.1996 of a learned Single Judge of this Court in Special Civil Application No. 2992/87. It is submitted that in another matter filed by a similarly situate employee, the Industrial Tribunal had allowed the reference and directed the respondent Abad Dairy to give the concerned employee the higher pay scale of Rs.380-560 instead of Rs.260-430. The said award dated 21.11.1986 came to be challenged by the Gujarat Dairy Development Corporation Ltd. by filing the above numbered petition. That petition came to be dismissed by this Court by the judgment dated 27.6.1996. It is, therefore, submitted that this Court may follow the said judgment and allow the present petition.

4. On behalf of the respondent Abad Dairy, various submissions have been made. It is stated that Abad Dairy, a unit of the Gujarat Dairy Development Corporation, is declared as a sick unit by the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 vide case No. 607/94 on 26.10.1994. The Dairy is facing financial crisis and has been continuously increasing losses year after year. In view of the aforesaid crisis, the respondent Dairy introduced voluntary retirement scheme on two occasions. Petitioner Nos. 1 and 3, therefore, took advantage of the said scheme and have resigned after availing of extra terminal benefits over and above the statutory dues upon retrenchment.

It is further submitted that the Tribunal in the instant case has examined all the relevant facts and has given a finding of fact that there was no other post involving comparable duties and for which the pay scale was Rs.380-560 either under the respondent Abad Dairy or under the Ahmedabad Municipal Corporation of which the

petitioner was previously an employee. It is, therefore, submitted that in this petition under Article 227 of the Constitution, this Court may not interfere with the findings given by the Tribunal.

As regards the judgment in Special Civil Application No. 2992/87, it is submitted that the said judgment pertains to the post of Senior Fitter as mentioned in the judgment and that, therefore, it was not applicable in the facts of the present case.

5. Having heard the learned counsel for the parties, it appears to the Court that in view of the limited scope of jurisdiction of this Court under Article 227 of the Constitution, when no jurisdictional infirmity is pointed out, this Court is not inclined to reappreciate the evidence which was led before the Tribunal. The Tribunal has given a finding of fact that there was no comparable post under the Ahmedabad Municipal Corporation or under the Abad Dairy which involves similar duties with higher pay scale of Rs.380-560. It is not possible to interfere with the said finding of fact.

As regards the reliance placed on the decision of this Court in Special Civil Application No. 2992/87, it is obvious that if the facts of the two cases were same, the same Industrial Tribunal (Industrial Tribunal, Ahmedabad) would not have given conflicting judgments. Per chance, if the concerned workmen in the said case who were given the benefit of the award dated 21.11.1986 in Reference (IT) No. 248/82 as confirmed by the judgment dated 27.6.1996 in Special Civil Application No. 2992/87 were discharging the same duties as petitioner No. 5 herein, i.e. Pasco Ramand Desoza, the respondent shall extend the benefits of the aforesaid judgment and award with effect from 27.6.1996.

6. Subject to the aforesaid clarification, this petition is dismissed.

May 5, 2000 (M.S. Shah, J.)
sundar/-